



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1998

The Honorable Glen Wilson  
Parker County Attorney  
One Courthouse Square  
Weatherford, Texas 76086

Letter Opinion No. 98-101

Re: Whether a constable is required to attend all  
sessions of a justice court (RQ-1169)

Dear Mr. Wilson:

You have asked this office whether, pursuant to the provisions of Local Government Code section 86.021, a constable is required to attend the justice court whenever it is in session. Based on the language of the statute, you conclude that such is the constable's obligation. We concur.

As you explain the situation which prompts your request, it has been the practice of some of the constables in your county to attend the justice courts in their respective precincts during jury trials but not during docket calls or hearings, or in the alternative "on an as needed basis, leaving the ultimate decision about whether they are required to attend court in the hands of the presiding Justice of the Peace." When apprised of this situation, your office considered whether such practices accorded with the constables' statutory duties, and concluded that they did not. Because the view you take of the matter does not accord with the constables' view, you have asked this office to resolve the question.

Local Government Code section 86.021 reads in part:

(a) A constable shall execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer. Notices required by Section 24.005, Property Code, relating to eviction actions are process for purposes of this section that may be executed by a constable.

(b) A constable *may* execute any civil or criminal process throughout the county in which the constable's precinct is located and in other locations as provided by the Code of Criminal Procedure or by any other law.

....

(e) *The constable shall attend each justice court held in the precinct.*  
[Emphases added.]

It is with subsection (e) that we are concerned here, and particularly with the effect of the word "shall." "Ordinarily, 'shall' or 'must' is of mandatory effect, but a statute is sometimes held to be directory notwithstanding the use of the word 'shall.'" 67 TEX. JUR. 3D *Statutes* § 103 (1989). While the word "shall," then, may at times be interpreted as merely directory, we think that in the context of this section its ordinary mandatory meaning was clearly intended. As your brief points out, in other subsections of section 86.021—as, for example, in subsection (b)—the legislature uses the word "may" to indicate discretionary authority. The use of both "shall" and "may" in the same section indicates, in our view, the legislature's intent that both words be given their ordinary significance. Accordingly, we find that the word "shall" in subsection (e) is mandatory. The sentence is not merely aspirational; it lays down the plain duty of the constable.

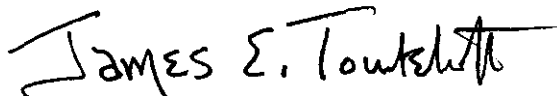
Nor is there in the statutory language any limitation of this duty to occasions such as jury trial. In our view, then, as in yours, the statute requires the attendance of the constable upon the justice court whenever it is in session—whether the nature of the session be a trial, a docket call, or a hearing.

Local Government Code section 86.021, then, requires the constable of each precinct to attend each session of the justice court for that precinct, whatever may be the purpose for which the court is sitting.

### S U M M A R Y

Local Government Code section 86.021 requires the constable of each precinct to attend each session of the justice court for that precinct, whatever may be the purpose for which the court is sitting.

Yours very truly,

A handwritten signature in black ink, reading "James E. Tourtelott". The signature is fluid and cursive, with a long horizontal stroke at the end.

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee